REMARKS

Claims 1-18 are the pending claims being examined in the application. Claims 1, 10 and 18 are independent. Claims 1-13, 16 and 18 have been amended. No new matter has been added. Reconsideration and further examination are respectfully requested. In response to the finality of the Office Action, Applicant is submitting herewith a Request for Continued Examination.

Claims 1-3, 5, 6, 8-13 and 15-18 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,859,840 (Singal) in view of U.S. Publication No. 2001/0029523 (Mcternan); Claim 4 was rejected under 35 U.S.C. §103(a) as being unpatentable over Singal in view of Mcternan, and further in view Dictionary of Computer Science, Engineering, and Technology by Phillip A. Laplante (Dictionary); Claim 7 was rejected under 35 U.S.C. §103(a) as being unpatentable over Singal in view of Mcternan, and further in view of U.S. Patent No. 5,568,181 (Greenwood); Claim 14 was rejected under 35 U.S.C. §103(a) as being unpatentable over Singal in view of Mcternan, and further in view of U.S. Publication No. 2004/0128343 (Mayer). Reconsideration and withdrawal of the rejections are respectfully requested for at least the following reasons.

Claim 1 recites a system comprising a mass storage device; a processor; a bandwidth measurement device executed by the processor for dynamically determining during retrieval of a content file, a bandwidth of a network connection over which the content file is being retrieved; a download manager executed by the processor for retrieving, and storing in the mass storage device, a portion of the content file, the download manager determining a size of the portion to retrieve in response to the determination made by the bandwidth measurement device; and a presentation manager executed by the processor for retrieving the portion of the content file from mass storage and displaying the portion with a media player application, wherein the download manager retrieves a remainder of the content file in response to the presentation manager displaying the retrieved portion of the content file.

By way of a non-limiting example, Applicant's Specification states, at paragraph [0046]:

For embodiments in which the bandwidth measurement device 36 measures network connection bandwidth dynamically during the data transfer by periodically issuing "ping" commands, the bandwidth measurement device 36 may use a rolling average of "ping" responses received to determine the bandwidth of the network connection. In others of these embodiments, the bandwidth measurement device 36 may use only the last "ping" response received to determine the bandwidth of the network connection. The periodicity with which the bandwidth measurement device 36 issues "ping" commands during the data transfer is selected to allow responsive adjustment of the network connection bandwidth determination without having a deleterious effect on the data transfer. "Ping" commands may be transmitted on the order of microseconds, milliseconds, tenths of seconds, or seconds.

As a further non-limiting example, Paragraph [0051] of Applicant's Specification states:

[0051] As the download proceeds, the system continues to sample the download rate and recalculates the remaining download time. If the download rate remains constant, after 40 additional seconds of download, the download manager 34 will have downloaded 3 MB of the file. At this point, the download manager 34 (or, in some embodiments, the bandwidth measurement device 36) determines that if the user were to begin displaying the content file, the remainder of the content file would finish downloading before the end of the content file is reached by the display manager, thereby insuring that no interruption of the content file display will be encountered. At this point, the download manager 34 can terminate the download of the content file and save the 3 MB it has already downloaded.

Amended independent claim 1 recites that the bandwidth manager dynamically determines the bandwidth of a network connection during retrieval of a portion of a content file and determines a size of the portion to retrieve in response to the determination made by the bandwidth measurement device.

Singal's system for prefix caching media objects differs from the claimed subject matter of claim 1. Singal teaches delivering a media object to a user over a network, whereby the media object is divided into first portions and remaining portions. The first portions are stored on an edge server and the remaining portions are stored on an origin

server, whereby the servers are in communication with the user. Upon receiving a request for delivery from a user, the edge server transmits the first portion of the media object to the user. The edge server then requests delivery of the remaining portions from the origin server. Singal teaches retrieving the remainder of the media object after transmitting the first portion of the media object to the user.

Singal further teaches the edge server searching a prefix cache to determine if object information matching the media object requested by the user is stored. If the media object is not stored in the prefix cache, available bandwidth is examined and a transfer rate (greater than zero and less than or equal to the available bandwidth) is reserved. Subsequently, a new prefix cache size is calculated, whereby additional data may be loaded. The reserved transfer rate may be used to transfer the additional data that may be loaded. Singal teaches resizing a cache upon the determination that a media file is unavailable, and recalculating a transfer rate for additional data to be uploaded into the cache.

Singal does not teach or suggest a bandwidth manager dynamically determining the bandwidth of a network connection during retrieval of a portion of a content file and determining a size of the portion to retrieve in response to the determination made by the bandwidth measurement device. Singal measures the bandwidth of its network connection prior to the transmission of a file. The Office Action refers to Figure 5, col. 6, lines 50-67, and col. 7, lines 1-20 of Singal as disclosing this feature.

These passages and Figure of Singal do not, however, disclose this feature. Specifically, Fig. 5 of Singal as well as col. 6, lines 50-67 and col. 7, lines 1-20 of Singal disclose querying for available bandwidth in step 158 if an object is unavailable. After the querying, Singal computes a prefix size (step 160) and then loads the data in step 162. Thus, Singal's bandwidth determination occurs at the beginning of Singal's process - upon a determination that an object is not available. Singal does not disclose dynamically determining the bandwidth of a network connection during retrieval of a portion of a content file, as claimed in amended independent claim 1.

Further, Singal does not disclose determining a size of a portion to retrieve in response to the determination made by the bandwidth measurement device. As Singal does not disclose dynamically determining the bandwidth of a network connection during

retrieval of a portion of a content file, Singal therefore does not disclose determining a size of a portion to retrieve in response to the bandwidth measurement device's determination. On page 7 of the Office Action, the Examiner states that "Singal does not teach but Mcternan teaches a presentation manager retrieving the portion of the content file from mass storage and displaying the portion with a media player application." Applicant respectfully traverses the contention that Mcternan cures the deficiencies of Singal.

Mcternan's system for accounting for variations in client capabilities in the distribution of a media presentation differs from the claimed subject matter of claim 1, and fails to teach or suggest the subject matter admittedly missing from Singal. Mcternan teaches a buffer containing data that is decoded by a Tap of specialized bandwidth. After the data is decoded, Mcternan proceeds to a Show Graph, which organizes software components that manipulate the data to present a show to a viewer. A check is made to determine if additional child signal paths are detected. If so, the child signals are traversed to determine if the signals are at the specified bandwidth of the Tap, whereupon they are added to the buffer. Subsequently, data contained in the buffer is decoded and passed to be rendered for viewing by a user.

Applicant submits that Mcternan's system for accounting for variations in client capabilities in the distribution of a media presentation does not teach, suggest or disclose the claimed subject matter of claim 1, which recites, *inter alia*, a bandwidth manager dynamically determining the bandwidth of a network connection during retrieval of a portion of a content file and determining a size of the portion to retrieve in response to the determination made by the bandwidth measurement device.

Thus, because Singal and Mcternan do not teach or suggest the above elements, it is respectfully submitted that Claim 1 is patentable over Singal and Mcternan, and Applicant respectfully requests that the Examiner withdraw the rejection. Nor could Singal and Mcternan, alone or in combination with any reference of record, render Claim 1 obvious, as no such combination would yield all of the elements in the presently recited claims. Therefore, Singal and Mcternan cannot form the basis of a proper § 103 rejection and a combination with other references would not form the basis of a proper § 103 rejection. Therefore, Applicant respectfully requests withdrawal of these rejections.

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For at least the foregoing reasons, Claim 1 and the claims that depend from Claim 1 are believed to be in condition for allowance. In addition, for at least the same reasons, Claims 10 and 18 are believed to be in condition for allowance; thus, the claims that depend from Claims 10 and 18 are also believed to be in condition for allowance. In view of the foregoing, the entire application is believed to be in condition for allowance, and such action is respectfully requested at the Examiner's earliest convenience.

Claim 4 was rejected under 35 U.S.C. §103(a) as being unpatentable over Singal in view of Mcternan, and further in view of Dictionary. It is respectfully submitted that the features described above with respect to Claim 1, from which Claim 4 depends, are applicable to this claim as well, and that Dictionary does not remedy these deficiencies. Therefore, Applicants submit that a combination of Singal, Mcternan and Dictionary would not yield all of the elements in the presently cited claims, and therefore the combination cannot form the basis of a proper obviousness rejection.

Claim 7 was rejected under 35 U.S.C. §103(a) as being unpatentable over Singal in view of Mcternan, and further in view of Greenwood. It is respectfully submitted that the features described above with respect to Claim 1, from which Claim 7 depends, are applicable to this claim as well, and that Greenwood does not remedy these deficiencies. Therefore, Applicants submit that a combination of Singal, Mcternan and Greenwood would not yield all of the elements in the presently cited claims, and therefore the combination cannot form the basis of a proper obviousness rejection.

Claim 14 was rejected under 35 U.S.C. §103(a) as being unpatentable over Singal in view of Mcternan, and further in view of Mayer. Claim 10, from which Claim 14 depends, claims similar features to claim 1. It is respectfully submitted that Mayer does not remedy the deficiencies noted above with respect to claim 1. Therefore, Applicants submit that a combination of Singal, Mcternan and Mayer would not yield all of the elements in the presently cited claims, and therefore the combination cannot form the basis of a proper obviousness rejection.

Having responded to all objections and rejections set forth in the outstanding Office Action, it is submitted that the currently pending claims are in condition for allowance and Notice to that effect is respectfully solicited. Additional characteristics or arguments may exist that distinguish the claims over the prior art cited by the Examiner,

and Applicant respectfully preserves their right to present these in the future, should they be necessary. In the event that the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, he is respectfully requested to contact Applicant's undersigned representative.

The Applicant's attorney may be reached by telephone at 212-801-9220. All correspondence should continue to be directed to the address given below, which is the address associated with Customer Number 76058.

The Commissioner is hereby authorized to charge any required fee in connection with the submission of this paper, any additional fees which may be required, now or in the future, or credit any overpayment to Account No. 50-1561. Please ensure that the Attorney Docket Number is referenced when charging any payments or credits for this case.

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Respectfully submitted,

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